

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**MONTANA ENVIRONMENTAL
INFORMATION CENTER,**

107 W. Lawrence St., #N-6
Helena, MT 59601

Plaintiff,

vs.

**UNITED STATES OFFICE OF
SURFACE MINING RECLAMATION
AND ENFORCEMENT,**

1849 C St. NW
Washington, DC 20240

Defendant.

Case No. 1:19-cv-02977

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. The Defendant United States Office of Surface Mining Reclamation and Enforcement (“OSMRE”) has violated the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* by failing to provide a determination on Plaintiff Montana Environmental Information Center’s (“MEIC”) FOIA request within the time limits provided by the FOIA. This lawsuit requests an order that declares that OSMRE has violated the FOIA by withholding documents responsive to MEIC’s request, enjoins the agency to immediately provide a determination on MEIC’s FOIA request, and provide MEIC with the files it has requested.

JURISDICTION, VENUE, AND BASIS FOR RELIEF

2. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331 because this action arises under the FOIA.

3. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 703, and 28 U.S.C. § 1391.

4. Declaratory relief is appropriate under 28 U.S.C. § 2201.
5. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. § 552(a)(4)(B).

PARTIES

6. Plaintiff MONTANA ENVIRONMENTAL INFORMATION CENTER is a non-profit organization dedicated to defending the public interest in protecting and restoring Montana's environment. MEIC has thousands of members across Montana and works to ensure that the state transitions from fossil fuels to clean energy sources, thereby helping to provide cleaner air and water for all. The records sought in this action are requested in support of these efforts.

7. Specifically, MEIC submitted a FOIA request to OSMRE for information, records, and communications from the past 12 months between: (1) OSMRE and the State of Montana regarding the Area F expansion of the Rosebud Mine and relating to climate change, greenhouse gas emissions, or water resources; and (2) OSMRE and Western Energy Co. regarding OSMRE's preparation of an environmental impact statement for the Area F expansion of the Rosebud Mine and relating to climate change, greenhouse gas emissions, or water resources. The failure of OSMRE to make a determination on MEIC's FOIA request in a timely manner harms MEIC and its members by denying them information to adequately scrutinize federal management of energy development.

8. Defendant U.S. OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT is a federal agency within the U.S. Department of the Interior. It is in possession and control of the records sought by MEIC, and as such, it is subject to the FOIA pursuant to 5 U.S.C. § 552(f).

STATEMENT OF FACTS

9. On June 6, 2019, Plaintiff MEIC submitted a FOIA request to Defendant OSMRE. The FOIA request sought records, information, and communications between OSMRE and the State of Montana and Western Energy Co. regarding the Area F expansion of the Rosebud Mine.
10. On June 10, 2019, MEIC sent a follow-up email and left a voicemail asking that OSMRE verify receipt of the FOIA request. OSMRE responded by email on the same day and acknowledged receipt of MEIC's FOIA request. OSMRE further acknowledged that it received MEIC's initial FOIA request on June 6, 2019.
11. The FOIA requires that an agency "shall—[] determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor" 5 U.S.C. § 552(a)(6)(A)(i).
12. Based on the date that OSMRE received the FOIA request, June 6, 2019, OSMRE was required to provide a "determination" pursuant to 5 U.S.C. § 552(a)(6)(A)(i) by July 5, 2019.
13. On July 8, 2019, MEIC emailed OSMRE noting that the 20 workday deadline had passed and inquiring whether a response was on its way or if in any way MEIC could assist OSMRE with the request.
14. On July 30, 2019, MEIC again emailed OSMRE to inquire about the status of the request.
15. On August 2, 2019, OSMRE responded to MEIC that the request had been "handed off to the new FOIA representative" for OSMRE.
16. OSMRE has given no further response regarding the status of the FOIA request.
17. To date, it has been 119 days since MEIC submitted its FOIA request to OSMRE.
18. OSMRE has not yet issued a determination on MEIC's FOIA request.

19. MEIC has fully exhausted all administrative remedies required by FOIA. 5 U.S.C. §§ 552(a)(6)(A), (a)(6)(C).

CAUSES OF ACTION

COUNT 1

VIOLATION OF THE FREEDOM OF INFORMATION ACT: DECISION DEADLINE VIOLATION

20. The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

21. Plaintiff MEIC has a statutory right to have Defendant OSMRE process their FOIA request in compliance with the FOIA.

22. MEIC's rights were violated when the OSMRE unlawfully failed to respond to MEIC's request with a determination within the deadline imposed by the FOIA. 5 U.S.C.

§ 552(a)(6)(A)(i).

23. Based on the nature of MEIC's organizational activities, it will undoubtedly continue to employ the FOIA's provisions in information requests to OSMRE in the foreseeable future.

24. MEIC's organizational activities will be adversely affected if OSMRE is allowed to continue violating the FOIA's response deadlines as it has in this case.

25. Unless enjoined and made subject to a declaration of MEIC's legal rights by this Court, OSMRE will continue to violate the rights of MEIC to receive public records under the FOIA.

26. MEIC is entitled to reasonable costs of litigation, including attorney fees pursuant to the FOIA, for this violation. 5 U.S.C. § 552(a)(4)(E).

COUNT 2

VIOLATION OF THE FREEDOM OF INFORMATION ACT: UNLAWFUL WITHHOLDING

27. The allegations made in all preceding paragraphs are re-alleged and incorporated by reference herein.

28. MEIC has a statutory right to the records they requested pursuant to FOIA.
29. OSMRE unlawfully failed to make records “promptly available” to MEIC as required under FOIA. 5 U.S.C. § 552(a)(6)(C). There is no legal basis for OSM to assert that any of FOIA’s nine disclosure exemptions apply. *See* 5 U.S.C. § 552(b)(1)-(9).
30. MEIC is entitled to litigation costs, including attorneys’ fees and costs pursuant to FOIA, for these violations. 5 U.S.C. § 552(a)(4)(E).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff MEIC respectfully requests that this Court:

31. Declare that Defendant OSMRE violated the FOIA by failing to make a timely determination on MEIC’s records request;
32. Direct by injunction that OSMRE immediately make a determination on MEIC’s records request and provide MEIC with the records responsive to their request by a date certain;
33. Direct by injunction that OSMRE provide the Conservation Groups with all the information sought in this action by a date certain;
34. Award MEIC their costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412, or any other applicable law; and
35. Grant such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 3rd day of October, 2019.

/s/ John R. Mellgren
John R. Mellgren (D. D.C. Bar # OR0002)
Western Environmental Law Center
120 Shelton McMurphey Blvd., Ste. 340
Eugene, Oregon 97401
(541) 359-0990
mellgren@westernlaw.org

Shiloh S. Hernandez (MT Bar No. 9970)
(pro hac vice application pending)

Western Environmental Law Center
103 Reeder's Alley
Helena, Montana 59601
(406) 204-4861
hernandez@westernlaw.org

Attorneys for Plaintiffs